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IN THE

Supreme Court of the United States

October Term, 1965

No. 904

A. C. KING, ET AL.,

Petitioners,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page
Citations to Opinion below	1
Jurisdiction	2
Questions Presented	1
Statutes Involved	2
Statement of Case	3
Reasons for Granting the Writ	4
Conclusion	11
Certificate of Service	12
Appendix	1a — 77a

CITATIONS

Cases:

Steele v. Louisville & Nashville R. Co., 1944 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 4-6

Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 1944, 323 U.S. 210, 65 S. Ct. 235; 89 L. Ed. 187 4-6

Graham v. Brotherhood of Firemen, 1949, 338 U.S. 232; 70 S. Ct. 14, 94 L.Ed. 22 4-6

Brotherhood of Railroad Trainmen v. Howard, 1952, 343 U.S. 768, 72 S. Ct. 1022, 96 L.Ed. 1283 4-5-6-8

Central of Georgia R. Co. v. Jones, 229 F. 2d 648 4-6

Slocum v. Delaware, Lackawanna & Western R. Co., 1950, 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795 5-6-7

Order of Railroad Conductors v. Southern R. Co., 1950, 339 U.S. 255, 70 S.Ct. 585, 95 L.Ed. 811 5-6

Fingar v. Seaboard Air Line R. Co., 5 Cir., 1960, 277 F.2d 698, 700 5-6

C. O. Bolt v. Joint Dining Car Employees, et al, 301 F.2d 20 5

Moore v. Illinois, 312 U.S. 630 5

Conley v. Gibson, 78 S.Ct. 99, 355 U.S. 41 7

Statutes:

28 U.S.C. §1331 2

28 U.S.C. §1337 2

28 U.S.C. §2201 2-3

28 U.S.C. §1254(1) 2

45 U.S.C. §151 2

45 U.S.C. §152 2

45 U.S.C. §153 2

IN THE
SUPREME COURT OF THE UNITED STATES
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No.

A. C. KING, ET AL.,
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vs.
ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners pray that a writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on November 6, 1963.

Citations to Opinions Below

The opinion of the Circuit Court of Appeals, printed in Appendix at page 1a, is reported in 323 F.2d 1005. The opinion of the Circuit Court of Appeals (case no. 19317), printed in Appendix at page 3a, is reported in 303 F.2d 274.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on November 6, 1963. Ap. page 1a. Rehearing was denied on December 11, 1963. Ap. page 2a. The Jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED.

Whether a United States District Court has jurisdiction to hear complaints filed by a minority faction of a union alleging invidious discrimination by the union's majority and the railroad company acting in concert which resulted in the taking of jobs from the minority and giving them to the majority, notwithstand-

ing both groups have separate seniority rosters.

Whether a United States District Court can be deprived of its jurisdiction to hear a complaint filed by a minority faction of a union alleging invidious discrimination by the majority faction of a union and the railroad company acting in concert which resulted in the taking of jobs from the minority and giving them to the majority, by the union's filing of a petition involving the same matter but not all the complaining plaintiffs before the Railroad Adjustment Board some thirty (30) days after plaintiffs had filed their complaint in the United States District Court.

STATUTES INVOLVED

Jurisdiction in this suit exists under and by virtue of the provisions of Title 28, U.S.C., Secs. 1331 and 1337; 45 USC, Secs. 151 and 152 and 153, Title 28 USC, Section 2201; 28 USC, Section 1254(1).

28 USC §1254(1). Court of appeals-Certiorari-Appeal-Certified questions. — Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 USC §1331. Federal question-Amount in controversy. — The district courts shall have original jurisdiction of all civil actions wherein the mater in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. (June 25, 1948, c. 646, §1, 62 Stat. 930.)

28 USC §1337. Commerce and anti-trust regulations. — The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. (June 25, 1948, c. 646, §1, 62 Stat. 931.)

28 USC §2201 — Creation of remedy — In a case of actual con-

troversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. (June 25, 1948 c. 646, §1, 62 Stat. 964; May 24, 1949, c. 139, 111, 63 Stat. 105.)

STATEMENT OF CASE

On October 6, 1960, Appellants, Negro Carmen Helpers who are members of the Brotherhood Railway Carmen of America, a National Union and employee of the Atlantic Coast Line Railroad Company, instituted a class action against the defendant Atlantic Coast Line Railroad Company, a corporation doing business in the State of Florida and Georgia and the defendant, The Grand Lodge Brotherhood Railway Carmen of America, an unincorporated union association doing business in the State of Florida and Georgia, affiliated with the A.F. of L.-C.I.O., claiming that the defendants are guilty of hostile discrimination against the plaintiffs and those Carmen Helpers similarly situated in violation of plaintiffs' rights secured under the Railway Labor Act. 45 U.S.C. Section 151, 152 by the taking away of their jobs and giving their jobs to white employees designated as Car Inspectors (R-13).

On November 3, 1960, the Defendant, Atlantic Coast Line Railroad Company filed a Motion to Dismiss, attacking the jurisdiction of the District Court (R-36).

On November 16, 1960 the Defendant, Brotherhood of Railway Carmen of America filed a Motion to Dismisss, attacking the jurisdiction of the District Court. (R-37).

On August 9, 1961, the District Court entered a final Order granting both defendants' Motion to Dismiss and refused to grant plaintiffs the opportunity to file an Amended Complaint (R-39).

On September 5, 1961, plaintiffs filed their Notice of Appeal to this Court in the United States District Court, Southern District of Florida, Jacksonville Division (R-42).

On May 17, 1963, this Court affirmed the decision of the trial court but remanded the case to afford plaintiffs an opportunity to file an amended complaint.

On July 26, 1962, the trial court entered an Order granting leave to file Amended Complaint (R-1). (A.—6a)

On August 17, 1962, Plaintiffs' Amended Complaint was filed (R-3). (Ap. 7a)

On August 27, 1962, Defendant Atlantic Coast Line Railroad Company filed its Motion to Dismiss (R-21). (Ap. 21a)

On October 2, 1962, Defendant Brotherhood Railway Carmen of America filed an Alternative Motion To Dismiss or for Summary Judgment together with Exhibits (R-22-43): (Ap. 21a, 22a).

On December 4, 1962, the United States District Court entered its Summary Final Judgment (R-52). (Ap. 44a)

On January 3, 1963, Plaintiffs filed their Notice of Appeal (R-56). (Ap. 46a).

On November 6, 1963, the United States Court of Appeals affirmed the decision of the lower court (Ap. 1a).

On December 2, 1963, Plaintiffs filed a Petition for Rehearing.

On December 11, 1963, this Court entered an Order denying Petition for Rehearing. (Ap. 2a).

REASONS FOR GRANTING THE WRIT

1. It is apparent that the decision of the court below is in direct conflict with the principle of law followed by this court in *Steele v. Louisville & Nashville R. Co.*, 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 1944, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187; *Graham v. Brotherhood of Firemen*, 1949, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22; *Brotherhood of Railroad Trainmen v. Howard*, 1952, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283; *Central of Georgia R. Co. v. Jones*, 229 F.2d. 648; A read-

ing of the cases upon which the lower court bottomed its decision will clearly show that there is an apparent conflict between the theory followed in the above cited cases and the theory applied in the lower court in this case. The decisions followed by the lower court did not involve the taking away of jobs from a minority faction of the union by the invidious discrimination of the majority, but instead involved the interpretation of a then existing work agreement, see *Slocum v. Delaware, Lackawanna & Western R. Co.*, 1950, 339 U.S. 239, 70 S. Ct. 577, 94 L.Ed. 795; *Order of Railroad Conductors v. Southern R. Co.*, 1950, 339 U.S. 255, 70 S.Ct. 585, 95 L.Ed. 811; and *Fingar v. Seaboard Air Line R. Co.*, 5 Cir., 1960, 277 F.2d 698, 700.

In order to clear up this apparent conflict over the jurisdiction of a United States District Court to entertain complaints of a minority faction of a union against alleged invidious discrimination by the majority faction of the union which result in the taking away of jobs from the minority faction, this Court must render a decision clearly defining the jurisdiction of a United States District Court to hear complaints of this nature, otherwise a large number of railroad employees will suffer irreparable injury.

2. The United States Court of Appeal for the Fifth Circuit has handed down conflicting decisions concerning exercise of a United States District Court's jurisdiction in controversies involving alleged illegal discrimination by majority factions against the minority factions of a union. *C. O. Bolt v. Joint Dining Car Employees*, et al, 301 F.2d 20.

The United States District Court and the United States Court of Appeals for the Fifth Circuit continue to rule that the Railway Labor Act, amended 45 USCA §153 deprives a United States District Court of exercising its jurisdiction involving disputes between employees, the bargaining agent and the Railroad Company until the exhaustion of all administrative remedies under the Railroad Labor Act, notwithstanding this Court's decision in *Moore v. Illinois*, 312 U.S. 630, *Brotherhood of Railroad Trainmen v. Howard*, 1953, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283

3. The decision of the Court below is believed to be erroneous and conflicting not only with decisions of this Court, but also conflicting with the Circuit Court's original decision in this case (Ap-2a). The Court of Appeals said in its first opinion in this very same case rendered on May 17, 1962, while affirming the dismissal of the original complaint filed in this suit by the trial court:

> "The Court presumably concluded that, reading the detailed allegations of the complaint together with annexed exhibits, it was clear that, in contrast to general conclusory allegations of discriminatory unfair representation and practices, this was really a suit on, and a controversy over, the interpretation of the collective bargaining agreement. Under Slocum v. Delaware, Lackawanna & Western R. Co., 1950, 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795; Order of Railroad Conductors v. Southern R. Co., 1950, 339 U.S. 255, 70 S.Ct. 585, 95 L.Ed. 811; and Fingar v. Seaboard Air Line R. Co., 5 Cir., 1960, 277 F. 2d 698, 700, the exclusive jurisdiction would of course, be in the Railway Adjustment Board."

"While we think that this construction of the complaint was permissible and is therefore affirmed, we feel that the Court ought not to have expressly denied leave to amend the complaint. *All parties are in agreement that if a complaint properly sets forth the theory of illegal discrimination of a type similar* to *Steele v. Louisville & Nashville R. Co.*, 1944, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 1944, 323 U.S. 210, 65 S. Ct., 235, 89 L.Ed. 187; *Graham v. Brotherhood of Firemen*, 1949, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22; *Brotherhood of Railroad Trainmen v. Howard*, 1952, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283; *Central of Georgia R. Co. v. Jones*, 229 F.2d. 648, cert. den. 352 U.S. 848, 77 S. Ct. 32, 1 L. Ed 2d 59, jurisdiction is properly in the Courts, rather than in the Railway Adjustment Board."

The Supreme Court of the United States speaking through Mr. Justice Black in its opinion rendered in Brotherhood of Rail-

road Trainmen v. Howard, 72 S. Ct. 1022, 343 U.S. 768 rule that the Railway Labor Act prohibits bargaining agent it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. This is the gist of the issue presented by the appellants in their complaint filed in the District Court, to-wit: Appellants' jobs were taken from them and given to white car inspectors as alleged in the complaint.

Mr. Justice Black further stated in the Howard opinion that "Courts can protect those threatened by such an unlawful use of power granted by a federal act.

"Here, as in the Steele case, colored workers must look to a judicial remedy to prevent the sacrifice of their rights under the Act. For no adequate administration remedy can be afforded by the National Railroad Adjustment or Mediation Board. The claims here cannot be resolved by interpretation of a bargaining agreement so as to give jurisdiction to the Adjustment Board under our holding in Slocum v. Delaware L&W. R. Co., 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795."

The Supreme Court in *Conley v. Gibson*, 78 S. Ct. 99, 355 U.S. 41, followed its ruling in *Trainmen v. Howard*, and for saidreason the Order of Dismissal by the District Court and affirmed by the United States Court of Appeals on the grounds that the appellants did not exhaust remedies under the Railway Labor Act, was error and should have been reversed.

If a complaint properly sets forth the theory of illegal discrimination based on a general allegation of hostile discrimination by the majority faction of a union which resulted in the taking away of jobs performed by the minority group and giving such jobs to the majority group over the objection of the minority group, the complaint is sufficient to invoke the jurisdiction of a United States District Court under the Railway Labor Act.

While the trial Judge in the Summary Final Judgment entered by the trial court on December 4, 1962 talks about there being no genuine issue of hostile discrimination charged against the defendant union raised by counter affidavit, this case was in

fact dismissed by the trial Judge on the second ground of defendants' Motion to Dismiss, to-wit: Alternative Motion To Dismiss or For Summary Judgment (Ap-22a).

Paragraph 2— "The Court lacks jurisdiction of the subject matter, exclusive jurisdiction of the dispute described in the Complaint being vested in the National Railroad Adjustment Board under the provisions of Section 3 First (i) of the Railway Adjustment Act. (48 Stat. 1191, 45 U.S.C., Sec. 153 First (ii).

The Trial Judge in the Summary Final Judgment ruled (Ap-44a):

2. "The alternative motion of the Defendant Union for summary judgment, in which the Defendant Railroad has joined, is granted upon the second ground thereof, namely that this Court lacks jurisdiction of the subject matter."

The same trial judge in his first Order of Dismissing the original complaint ruled (Ap-32a):

3. "Since exclusive jurisdiction of the dispute described in the Complaint is vested in the National Railroad Adjustment Board, involving as it does a dispute growing out of the interpretation or application of agreements concerning "rates of pay, rules on working conditions" (Section 3 First (i) of the Railway Labor Act (45 U.S.C. Sec. 153 First (if), 48 Stat. 1191).

Because of the trial Court's ruling as cited above which was affirmed by the United States Court of Appeals, it is the position of Petitioners that the Summary Final Judgment entered by the trial judge and affirmed by the Circuit Court of Appeals is erroneous and in conflict with the United States Court of Appeal own prior decision rendered herein, as well as the applicable laws upheld by the U.S. Supreme Court in *Brotherhood of Railroad Trainmen v. Howard*, 72 S.Ct. 1022, 343 U.S. 768, and for said reason should be reversed.

As to the Court's statement that there was no issue of hostile discrimination charged against the Union because the Union filed a claim before the National Railroad Adjustment Board, Peti-

tioners took the position before the trial court, the Circuit Court and before this court that the hostile discrimination complained of by plaintiffs against the Union was not that the Union would not take their claim before the Board, but that the majority faction which controlled the Union was taking jobs that belong to the minority faction and that the Union as the legal representative was not fairly protecting the jobs of the minority. (Ap 8a, 9a) paragraphs VI and VII of the Complaint. Paragraph XII of the Complaint allege the specific acts of taking jobs from plaintiffs and giving them to Carmen who constitute the majority faction of the Union (Ap- 12a, 13a). Both defendants having joined in the Alternative Motion To Dismiss or For Summary Judgment admit that work formerly performed by the plaintiffs has been assigned to Carmen (Ap 22a). Both defendants admit that car oiling and packing has been done by Carmen Helpers on the property involved some forty (40) years or more (Ap- 26a; 28a).

Petitioners have consistently taken the position that their right to continue to perform the job of car oiling and packing would not be fully adjudicated before the National Railroad Adjustment Board because it was not a mere question of interpreting the contract, but a question as to whether the Union could without the agreement of the minority permit the majority to take away the jobs of the minority without making any arrangements for their welfare or reassignments.

The final award of the National Railroad Adjustment Board apparently sustain the position of Appellants which is as follows: (Letter from General Chairman, Carmen, dated May 29, 1963)

JOINT PROTECTIVE BOARD

ATLANTIC COAST LINE

AND GEORGIA RAILROADS

Florence, S.C.
May 29, 1963

TO ALL LOCAL CHAIRMEN

Atlantic Coast Line Railroad

Dear Sirs and Brothers:

I regret to advise that the National Railroad Adjustment Board in Award No. 4110 has denied our claim in behalf of Carmen Helpers from Florence, S. C. and Waycross, Ga. who were removed from service and supplanted by carmen.

I am attaching hereto advance copy of this Award, the usual printed copies will be forwarded to you as soon as they are received by this office.

The Board has not as yet made a decision on Docket No. 4026 which includes a similar claim in behalf of Carmen Helpers at Tampa, Jacksonville, Savannah, High Springs, Sanford, Rocky Mount and Lakeland, but since these claims are identical it is assumed that the Board's decision will be the same.

With kind personal regards, I am

Fraternally yours,
J. S. HEAD,
General Chairman, Carmen.

/SH/nh

DISSENT OF LABOR MEMBERS TO AWARD NO. 4110

An award is only as good as the reasoning upon which it is based. There is no reason given for the present negative award except so-called precedent awards. Unfortunately those awards, and likewise the instant award, ignored the primary function of the Adjustment Board, namely to adjust disputes in accordance with the terms of the agreement existing between the parties to said dispute. Upholding the carrier in its unilateral change in the working conditions set forth in the governing agreement is repugnant to the purposes and command of the Railway Labor Act and constitutes an encroachment into the field of collective bargaining. The Division should have held that the carrier's failure to give notice of the desired instant change and negotiate in reference thereto with the statutory representative, as provided by the Railway Labor Act, left the collective agreement in force and required an affirmative award. See Order of Railway Tele and required an affirmative award. See Order of Railway Tele graphers vs. Railway Express Agency, 64 S.Ct. 582.

s/ C. E. Bagwell
s/ T. E. Losey
s/ E. J. McDermott
s/ R. E. Stenzinger
s/ James B. Uink

CONCLUSION

It is unmistakably clear from the above cited award by the National Railroad Adjustment Board that the Court was in error to require plaintiffs to submit their claim to an Adjustment Board that had neither the jurisdiction or authority to fully rule on all the issues raised by Plaintiffs in their complaint and for said reason it is the position of Petitioners that the Summary Final Judgment entered by the Trial Court on December 4, 1962 and affirmed by the United States Court of Appeals in its opinion dated November 6, 1963 (Ap. 1a) is erroneous and unless the court grant petitioners' Writ, not only these petitioners but many more minority factions employed in this Nation's Railroad Industry will be deprived of their jobs without there being a proper forum, having sufficient jurisdiction to determine the validity of their complaint, to which they may appeal.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

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Counsels for Petitioners

I DO HEREBY CERTIFY that on this 9th day of March, A.D. 1964, I mailed a true and correct copy of the foregoing Petition for Writ of Certiorari to the Attorneys for Respondents, by placing the same in a properly addressed envelope, with sufficient postage thereon and depositing the same in the United States mail.

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By Ernest D. Jackson
Counsels for Petitioners